



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,875	07/24/2003	Stefan Tobolka	93179-7	9284

22463 7590 12/01/2005

SMART AND BIGGAR  
438 UNIVERSITY AVENUE  
SUITE 1500 BOX 111  
TORONTO, ON M5G2K8  
CANADA

EXAMINER
----------

WEEKS, GLORIA R

ART UNIT	PAPER NUMBER
----------	--------------

3721

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/625,875

Applicant(s)

TOBOLKA, STEFAN

Examiner

Gloria R. Weeks

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/24/03; 4/30/04;  
5/13/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-3, 5-11, 13, 14 and 16, drawn to pouch, classified in class 383, subclass 104.
  - II. Claims 18-21, drawn to a method of forming fluid-filled containers, classified in class 53, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as forming the seal prior to filling the container.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with applicant's representative, Mr. Ronald D. Faggetter, on 11/09/2005 a provisional election was made with traverse to prosecute the invention of Group II, claims 18-21. Affirmation of this election must be made by applicant in

Art Unit: 3721

replying to this Office action. Claims 1-3, 5-11, 13, 14 and 16 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20, as written, does not grammatically flow sufficient to define Applicant's invention clearly. Examiner recommends amending claim language to definitively define the first level relative to the bottom and the opposite concave or oblique sides.

Claim 21 recites the limitation "said front pouch" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3721

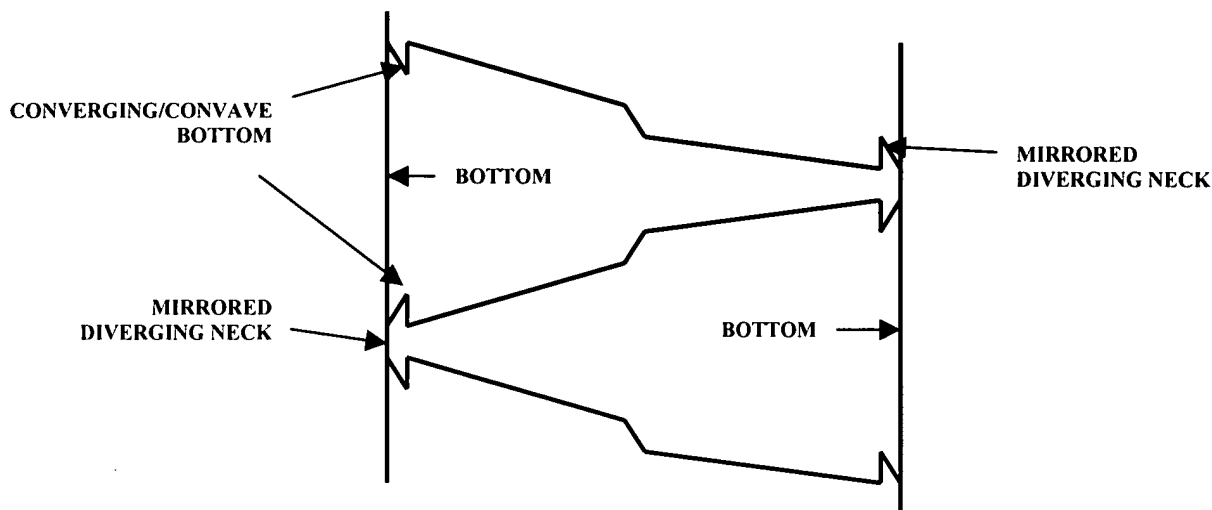
8. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobolka (USPN 5,761,884) in view of Carlisle (USPN 3,815,794).

In reference to claim 18, Tobolka discloses a method of forming fluid-filled containers from a vertically disposed tube (58) formed of flexible material (50), the tube (58) being at least partially filled with fluid, the method comprising: forming transverse, longitudinally spaced seals (60) extending across the tube (58) between which fluid (via 54) is located, each seal (60) defining sides of a pair of adjacent container (10), successive seals (60) being configured to define nested, alternately oriented containers (10), with each container (10) having a neck (30) extending from a body (12), each neck (30) terminating in an enlarged head (figures 4a-4c) having diverging sides. Tobolka does not disclose the container having a bottom portion with converging sides.

Carlisle teaches a method of forming fluid-filled containers from a flexible material, the method comprising: forming a seal across flexible material thereby defining a side of a container (10), the container (10) having a neck (12) extending from a body (20), each neck (12) terminating in an enlarged head having diverging sides, and each body (20) having a bottom portion with converging sides (33). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Tobolka to include step of forming a converging bottom as taught by Carlisle, as column 10 lines 33-40 of Carlisle state that such a modification provides stability to the bottom of the container when the bottom of the container is resting on a surface.

Art Unit: 3721

Regarding the limitation of the converging portions of the bottom being mirror images of the diverging sides of the head of the neck of the container, this would inherently take effect as the method of Tobolka disclosing sealing the tube to form successive containers (*see image below*).



With respect to claim 19, the method of Tobolka discloses forming transverse seals (60) of uniform width across the tube (58).

9. Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobolka (USPN 5,761,884) in view of Orsini (USPN 3,003,681).

In reference to claim 18, Tobolka discloses a method of forming fluid-filled containers from a vertically disposed tube (58) formed of flexible material (50), the tube (58) being at least partially filled with fluid, the method comprising: forming transverse, longitudinally spaced seals (60) extending across the tube (58) between which fluid (via 54) is located, each seal (60) defining sides of a pair of adjacent container (10), successive seals (60) being configured to define nested, alternately oriented containers (10), with each container (10) having a neck (30)

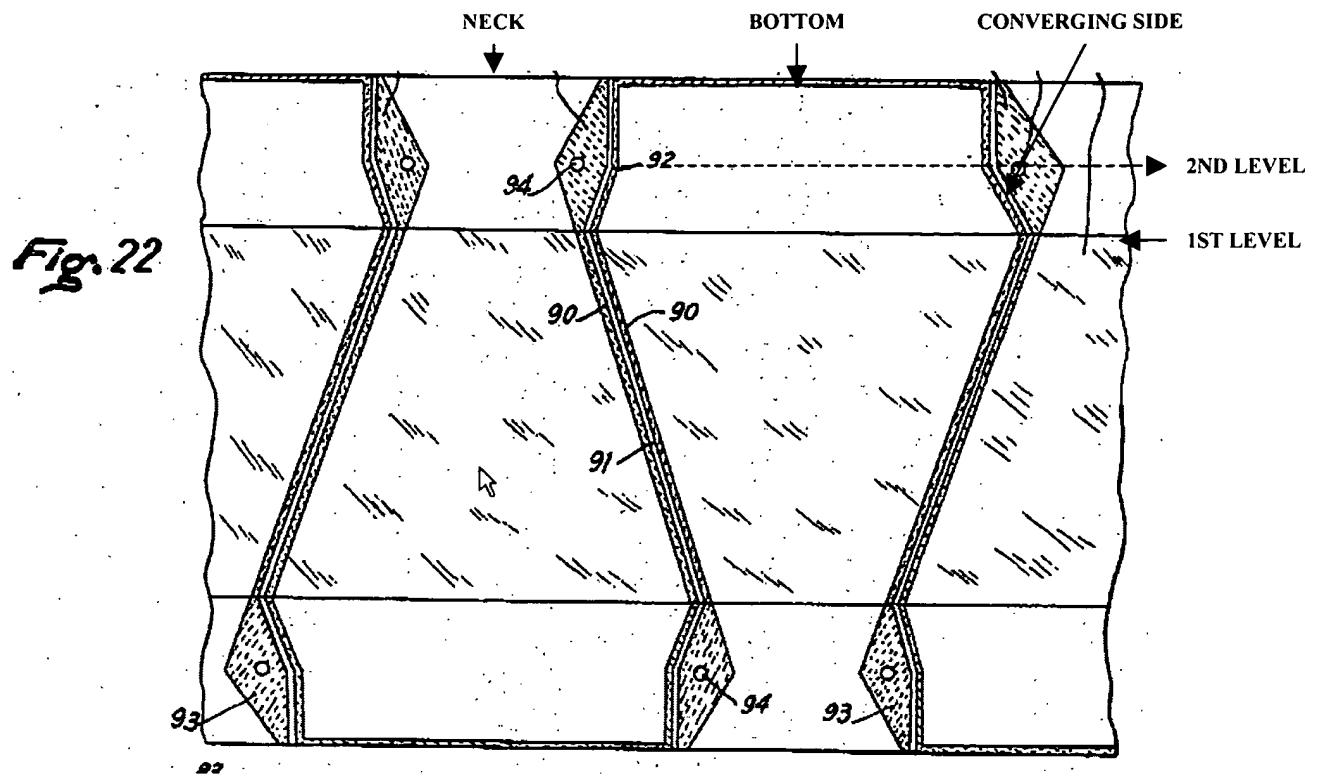
Art Unit: 3721

extending from a body (12), each neck (30) terminating in an enlarged head (figures 4a-4c) having diverging sides. Tobolka does not disclose the container having a bottom portion with converging sides.

Orsini teaches a method of forming fluid-filled containers from a flexible material, the method comprising: forming a seal (90) across flexible material (figure 22; *see figure below*) thereby defining a side of a container, the container having a neck extending from a body, each neck terminating in an enlarged head having diverging sides, and each body having a bottom portion with converging sides that mirror the diverging sides of the neck. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Tobolka to include step of forming a converging bottom as taught by Orsini, as column 1 lines 37-63 of Carlisle state that such a modification provides stability to the bottom of the container when the bottom of the container is resting on a surface.

Regarding claim 19, the method of Tobolka discloses forming transverse seals (60) of uniform width across the tube (58).

With respect to claims 20 and 21, the modified method of Tobolka in view of Orsini discloses forming containers wherein each container, when flat, has a first width at a first level above a bottom, and concave opposite sides between the first level and the bottom such that a width of the container progressively decreases below the first level; and a second level defining a second section between the bottom and the second level, wherein the pouch wall is narrower at the second level than at the first level.



### Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

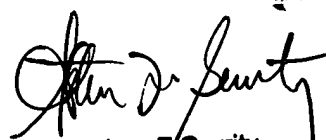


Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks  
Examiner  
Art Unit 3721

  
grw  
November 22, 2005

  
Stephen F. Gerrity  
Primary Examiner